IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

C.W.P. No. 6088 of 2007
Date of Decision: 27.11.2007

Shashi Arora.

..... Petitioner through Shri Rajesh Arora, Advocate.

Versus

State of Haryana and another.

..... Respondents through Shri Randhir Singh, Additional Advocate General, Haryana.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

The petitioner, by way of the present petition under Articles 226 and 227 of the Constitution of India, has prayed for issuance of a writ in the nature of certiorari for quashing letter dated 19.1.2006 (Annexure P6) and order dated 22.11.2001 (Annexure P10). She has further prayed that a writ of mandamus be issued to the respondents to refund the amount deposited by her husband as earnest money with interest.

It has been averred in the writ petition that the husband of the petitioner was a successful bidder for booth site no.15 and shop-cum-flat site no.27, Opposite New Janta Colony, Faridabad in an auction held on

19.4.2000 by the functionaries of the Government of Haryana. He accordingly deposited 25% of the sale consideration, amounting to Rs.83750/- and Rs.1,80,000/- vide treasury challans dated 20.4.2000 (Annexures P3 and P2, respectively). As per the petitioner, the bid was subject to the approval by the Chief Settlement Commissioner, Rehabilitation, Department, Haryana, but no information in that regard came to the knowledge of the bidder and ultimately, it transpired that the same could not be granted because of the notification issued by the Ministry of Defence, Government of India stipulating that no construction could be raised within 900 metres around Dabua Air Force Station, which also covered the auctioned sites. The husband of the petitioner expired on 30.1.2002 and she made a prayer to the respondents that the amount deposited by him pursuant to the aforementioned auction be refunded. However, they failed to either refund the amount or to address the grievance of the petitioner.

In the written statement filed by the respondents, it has been stated that the sites in question were, in fact, auctioned under the provisions of Displaced Persons (Compensation and Rehabilitation) Act,1954 (for short, `the Act'). It has further been stated that the Act has since been repealed by the Parliament by Act No.38 of 2005 without providing any saving clause and as a result, no functionary has been left, who could deal with such properties or the disputes relating thereto. The respondents have averred that in the instant case, the bidder had failed to deposit the balance amount despite notices issued to him and even a publication was carried out

in the local newspaper on 16.12.2001 by the Tehsildar (Sales), Faridabad, but still he failed to do the needful. This resulted in passing of order dated 22.11.2001 by the Naib Tehsildar (Rehabilitation), Faridabad vide which the already deposited amount by the bidder was forfeited and the area in question was resumed in favour of the State Government. They have further averred that the said order has not been challenged either by the bidder or the petitioner and as such, it has attained finality.

We have heard the learned counsel for the parties and have also perused the record.

The petitioner's husband, who had deposited 25% of the sale consideration pursuant to the auction, could not get approval in his favour on account of the stand taken by the concerned authorities that the area came within the restricted zone as declared by the Ministry of Defence, Government of India, vide notification dated 22.5.2001. Therefore, even if the approval had been granted on 5.4.2001, as alleged by the respondents, the same was meaningless as the bidder was not entitled to raise any construction on the auctioned sites. Consequently, the demand of the balance amount by the respondents was equally meaningless. The respondents could not ask for the balance amount, especially knowing the fact that the bidder was not entitled to utilize the sites. As such, their action in asking for the balance amount and subsequent notices issued were completely erroneous and arbitrary. In this view of the matter, when the demand for refund was made by the petitioner after her husband had expired, the respondents could not take up the plea that the auction of the

sites in his favour had been cancelled on account of non-deposit of the balance amount and in our opinion, Annexures P6 and P10 are patently illegal and arbitrary and are liable to be quashed.

Accordingly, the writ petition is accepted; Annexures P6 and P10 are quashed and the respondents are directed to refund the amount due to the petitioner forthwith within a period of two months from today, failing which they shall be liable to pay the due amount along with interest at the rate of 9% per annum from the date when the demand was raised.

(Vijender Jain)
Chief Justice

November 27, 2007
"SCM"

(Mahesh Grover)
Judge